

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, .  
Plaintiff, .  
vs. . Case No. 22-mj-10339  
MITCHELL HENNESSEY, . Newark, New Jersey  
Defendant. . December 13, 2022  
.

TRANSCRIPT OF INITIAL APPEARANCE  
BEFORE THE HONORABLE MICHAEL A. HAMMER  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (the parties appeared (heard via Zoom) ) :

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1 | (Commencement of proceedings)

2 |  
3 | THE COURT: All right. Good afternoon, everyone.

4 | This is the matter of United States versus Mitchell  
5 | Hennessey. This is a Rule 5 on an indictment from the U.S.  
6 | District Court for Southern District of Texas.

7 | Can I have appearances, please, beginning with the  
8 | Government.

9 | MS. LYONS: Good afternoon, Your Honor. Kelly  
10 | Lyons on behalf of the United States.

11 | THE COURT: All right. Good afternoon, Ms. Lyons.  
12 | And how about for Mr. Hennessey?

13 | MR. BROWN: For Mr. Hennessey, Jeffrey Brown from  
14 | the Dechert LLP for purposes of today's proceedings only.

15 | THE COURT: All right. Thank you, Mr. Brown.

16 | So let me begin with advising Mr. Hennessey of his  
17 | rights.

18 | So, Mr. Hennessey, you have the right to remain  
19 | silent. You're not required to make -- oh, I'm sorry.

20 | Before I get too far down the road, Mr. Brown, does  
21 | Mr. Hennessey consent to proceeding remotely today? Or would  
22 | he prefer to adjourn today and conduct this initial  
23 | appearance in person?

24 | MR. BROWN: We consent to remote appearance.

25 | THE COURT: All right. Thank you.

1                   So, Mr. Hennessey, let me go back to advising you  
2 of your rights.

3                   You have the right to remain silent. You're not  
4 required to make any statements or to speak with anyone at  
5 any time. If you do speak, you may stop at any time. And  
6 anything you do say can and likely will be used against you  
7 in a court of law.

8                   I know that you're represented by Mr. Brown from  
9 the Dechert firm. But let me just advise you that you have  
10 the constitutional right to be represented by counsel in this  
11 matter. If you could not afford an attorney, the Court would  
12 appoint counsel for you at no cost to you.

13                   Also, the Government has an affirmative obligation  
14 pursuant to Supreme Court case law -- such as Brady v.  
15 Maryland; in Giglio v. United States -- to timely disclose  
16 information to the defense as to criminal liability on the  
17 charged offenses as well as mitigation of any punishment that  
18 may be imposed. So, for example, if the Government had in  
19 its possession information that might cast doubt on the  
20 credibility of government witnesses or information that might  
21 be used to disprove the Government's charges or theory of the  
22 case against you, the Government has an obligation to turn  
23 that information over to the defense at an appropriate point  
24 in the case.

25                   If the Government failed to do this, to produce

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1 this information -- and I am not at all suggesting that the  
2 Government would -- but if the Government failed to do that,  
3 the Government itself could face some pretty significant  
4 penalties, including but not limited to exclusion of  
5 evidence, dismissal of charges, and ethics proceedings.

6 Further, you have the right to have an identity  
7 hearing where the Government would have to prove that you  
8 are, in fact, the same Mitchell Hennessey as set forth in the  
9 indictment.

10 Finally, pursuant to Federal Rule of Criminal  
11 Procedure 19, you have the right to request that this case be  
12 transferred to the District of New Jersey for the purposes of  
13 waiving trial and pleading guilty.

14 Now, please understand, I am not at all suggesting  
15 that you necessarily should do those things. I'm merely  
16 advising you of your rights.

17 If you were interested in doing that, you would  
18 have to so indicate in writing, and then the United States  
19 attorneys for both the District of New Jersey and the  
20 Southern District of Texas would have to agree to that.

21 All that having been said, Mr. Hennessey, do you  
22 understand your rights?

23 You have to -- there you go.

24 THE DEFENDANT: Yes, Your Honor. I do.

25 THE COURT: Okay. Good.

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1 | And so, obviously, you are represented by counsel.

2 | So let me ask Mr. Brown, has the defense received a  
3 | copy of the indictment in this matter?

4 | MR. BROWN: We have, Your Honor. And we will waive  
5 | any reading.

6 | THE COURT: All right. Thank you.

7 | Can I ask the Government to please advise the  
8 | defense of the statutory violations, maximum penalties, and  
9 | any appropriate advisements.

10 | MS. LYONS: Yes, Your Honor.

11 | The defendant is charged in Count 1 with conspiracy  
12 | to commit securities fraud in violation of 18 U.S.C. § 1349.  
13 | He's also charged in Counts 3 and 5 with securities fraud in  
14 | violation of 18 U.S.C. §§ 1348 and 2.

15 | The maximum penalties for both of those offenses  
16 | are 25 years in prison; \$250,000 fine or twice the gross  
17 | pecuniary gain to any person or loss to any person; five  
18 | years' supervised release; and a \$100 mandatory special  
19 | assessment.

20 | I would also note that we believe the defendant is  
21 | a United States citizen. However, if he were not a citizen  
22 | of the United States, conviction of the charged offenses may  
23 | result in the defendant being subject to immigration  
24 | proceedings and removed from the United States. If the  
25 | defendant is a citizen of another country, the defendant has

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1 a right to contact the consulate of that country concerning  
2 these charges.

3 THE COURT: All right. Thank you.

4 Mr. Brown, have you spoken to Mr. Hennessey  
5 concerning the identity hearing and what he wants to do about  
6 that?

7 MR. BROWN: Not in detail. My expectation is that  
8 we're not going to contest identity, Your Honor. And so I  
9 don't know if you want to set a control date for an identity  
10 hearing that we could then write to the Court and put off or  
11 whatever your preferred procedure is.

12 THE COURT: Yeah. That's fine. Why don't we  
13 say -- today's Tuesday. Why don't we say if there's no  
14 objection from either side, we'll put it down tentatively for  
15 Friday at 2 P.M. Obviously, if the defense notifies the  
16 Court and the Government before then that they're waiving  
17 identity, then we can adjourn it. Okay? --

18 (Simultaneous conversation)

19 THE COURT: Or cancel --

20 (Simultaneous conversation)

21 MS. LYONS: I'm sorry, Your Honor. Would that be  
22 in person or over Zoom, just for planning purposes?

23 THE COURT: Well, let's talk about that.

24 Mr. Brown, what's the defendant's preference?

25 MR. BROWN: I would expect -- I think the chances

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1 of us having it are so limited that I would not want to  
2 burden everybody by suggesting that we should prepare to be  
3 present in person. So if we were to have it, I think we  
4 would waive everyone's appearance and proceed on consent with  
5 a virtual hearing.

6 THE COURT: Ms. Lyons, any objection to what  
7 Mr. Brown just articulated?

8 MS. LYONS: No objection, Your Honor.

9 THE COURT: All right. Great. That makes sense to  
10 me too.

11 So tentatively, Friday, 2 P.M., via Zoom.

12 Okay. If I am not mistaken, the only thing left  
13 for us to cover is bail. I trust that parties have seen  
14 Pretrial's recommendation.

15 Ms. Lyons, what's the Government reaction?

16 MS. LYONS: No objections to the package and the  
17 conditions proposed by Pretrial --

18 THE COURT: All right.

19 Mr. Brown, how about for the defense?

20 MR. BROWN: No objections at present, Your Honor.  
21 We may have some qualms about certain of the conditions, but  
22 we think the better place to address them is in the Southern  
23 District of Texas. And we're willing to accept those terms  
24 for present purposes.

25 THE COURT: Well, I won't disagree with that.

1                   So -- and I find that in light of the charged  
2 conduct and my review of Pretrial Services's report and  
3 Title 18 U.S.C. § 3142, the conditions proposed by Pretrial  
4 are appropriate and reasonable. So I'm going to order that  
5 Mr. Hennessey be released on a \$250,000 unsecured bond,  
6 subject to Pretrial Services supervision.

7                   Mr. Hennessey must surrender all passports and  
8 travel documents to Pretrial Services. He may not apply for  
9 any new travel documents. His travel is restricted to the  
10 continental United States unless Pretrial Services --  
11 sorry -- unless the Court approves otherwise.

12                  He must maintain his current residence or a  
13 residence approved by Pretrial.

14                  He must maintain or actively seek employment as  
15 approved by Pretrial.

16                  He shall have no contact with co-defendants,  
17 victims or witnesses unless in the presence of counsel.

18                  He may not post on social media about securities.

19                  He may not be employed in the sale of securities or  
20 engage in trading securities.

21                  For any financial transactions greater than  
22 \$10,000, Mr. Hennessey must get the advance approval of  
23 Pretrial Services.

24                  And at a date to be determined, Mr. Hennessey shall  
25 report to the United States marshal in Newark, New Jersey,

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1 for processing.

2 Ms. Lyons, anything else for the Government today?

3 MS. LYONS: Nothing from the Government,

4 Your Honor.

5 THE COURT: All right.

6 Mr. Brown, how about on behalf of Mr. Hennessey?

7 MR. BROWN: No. Nothing from us. Thank you,

8 Your Honor.

9 THE COURT: All right. Thank you. And then we'll  
10 wait to hear from Mr. Brown concerning Friday. Okay?

11 MR. BROWN: Understood, Your Honor.

12 THE COURT: All right. Have a good afternoon,  
13 everyone.

14 Thank you very much.

15 MR. BROWN: Thank you.

16 (Conclusion of proceedings)

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|Certification

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11 I further certify that I am in no way related to any of  
12 the parties hereto nor am I in any way interested in the  
13 outcome hereof.

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S/ *Sara L. Kern*

4th of January, 2023

Signature of Approved Transcriber

Date

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